

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 ANDREW SEVEY, ) No. C 10-3677 LHK (PR)  
12 Plaintiff, ) ORDER DENYING  
13 v. ) PLAINTIFF'S MOTION FOR  
14 SOLIZ, et al., ) RECONSIDERATION;  
15 Defendants. ) DISMISSING DEFENDANTS  
16 \_\_\_\_\_  
17 (Docket No. 48)

17 Plaintiff, a state prisoner proceeding *pro se*, filed an amended civil rights complaint  
18 pursuant to 42 U.S.C. § 1983 alleging that employees of the Lake County Sheriff's Department  
19 violated his constitutional rights. On July 5, 2011, the Court granted in part and denied in part  
20 Defendants' motion to dismiss, and denied without prejudice Plaintiff's motion to compel. The  
21 Court issued a further scheduling order.

22 A. Motion for Reconsideration

23 On July 14, 2011, Plaintiff filed a motion for reconsideration. He argues that the Court  
24 should not allow Defendants another opportunity to file a dispositive motion, and disagrees with  
25 the Court's denial of his motion to compel. Where the Court's ruling has not resulted in a final  
26 judgment or order, reconsideration of the ruling may be sought under Rule 54(b) of the Federal  
27 Rules of Civil Procedure, which provides that any order which does not terminate the action is  
28 subject to revision at any time before the entry of judgment. *See Fed. R. Civ. P. 54(b).*

1 “Reconsideration is appropriate if the district court (1) is presented with newly discovered  
 2 evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is  
 3 an intervening change in controlling law.” *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255,  
 4 1263 (9th Cir. 1993).

5 The Court has reviewed and considered Plaintiff’s motion for reconsideration and finds  
 6 that he has not satisfied any of the factors necessary to warrant reconsideration. Accordingly,  
 7 Plaintiff’s motion for reconsideration is DENIED.

8 Similarly, Plaintiff’s request for permission to file an interlocutory appeal is DENIED.  
 9 *See* 28 U.S.C. § 1292(b); *In re Cement Antitrust Litigation*, 673 F.2d 1020, 1026 (9th Cir. 1982)  
 10 (noting that to warrant an interlocutory appeal, Plaintiff must demonstrate that (1) there is a  
 11 controlling question of law, (2) that there are substantial grounds for difference of opinion, and  
 12 (3) that an immediate appeal may materially advance the ultimate termination of the litigation).

13 Plaintiff has also requested appointment of counsel. Plaintiff’s request is DENIED.  
 14 Although Plaintiff states that he suffers from a neurological problem and head trauma, the Court  
 15 finds that he has not demonstrated exceptional circumstances. *See Rand v. Rowland*, 113 F.3d  
 16 1520, 1525 (9th Cir. 1997); *see also Lassiter v. Dep’t of Social Services*, 452 U.S. 18, 25 (1981)  
 17 (there is no constitutional right to counsel in a civil case). The issues in this case are not  
 18 particularly complex, and Plaintiff has thus far been able to adequately present his claims. This  
 19 denial is without prejudice to the Court’s *sua sponte* appointment of counsel at a future date  
 20 should the circumstances of this case warrant such appointment.

21 B. Dismissed Defendants

22 On July 5, 2011, the Court dismissed with leave to amend Plaintiff’s Eighth Amendment  
 23 claim against Defendants Jimenez, Estep, Owens, Norton, Eagleton, and Santana because there  
 24 was no reasonable inference, even liberally construing Plaintiff’s amended complaint, that these  
 25 defendants proximately caused injuries to Plaintiff. The Court directed Plaintiff to file a second  
 26 amended complaint within thirty days to correct the deficiencies if he could provide facts  
 27 showing the basis for liability of each of the dismissed defendants. The Court warned Plaintiff  
 28 that failure to file a second amended complaint within the thirty day deadline would result in

1 automatic dismissal of those defendants without leave to amend and without prejudice. More  
2 than thirty days have passed, and Plaintiff has not filed a second amended complaint. Thus,  
3 Defendants Jimenez, Estep, Owens, Norton, Eagleton, and Santana are DISMISSED from this  
4 action without prejudice.

5 This terminates docket number 48.

6 IT IS SO ORDERED.

7 DATED: 8/29/11

  
LUCY H. KOH  
United States District Judge